

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

SAYLOR V. NEBRASKA DEPT. OF CORR. SERVS.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

JAMES SAYLOR, APPELLANT,  
V.  
NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, APPELLEE.

Filed August 21, 2012. No. A-11-658.

Appeal from the District Court for Johnson County: DANIEL E. BRYAN, JR., Judge.  
Affirmed.

Joshua D. Barber, of Barber & Barber, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Linda L. Willard for appellee.

SIEVERS, MOORE, and PIRTLE, Judges.

PIRTLE, Judge.

**INTRODUCTION**

James Saylor, a Nebraska prison inmate, was disciplined for violating a prison rule. Unhappy with that decision and believing he had been treated unfairly, he appealed. Eventually, the appeal worked its way through the system to the Johnson County District Court, which affirmed the prior decisions. Saylor now appeals to this court, and because we find no error in the proceedings below, we affirm.

**BACKGROUND**

On September 14, 2009, at approximately 8:45 a.m., Saylor was being prepared for transfer from the Nebraska State Penitentiary in Lincoln, Nebraska, to the Tecumseh State Correctional Institution and was placed in a holding cell. Saylor told the prison staff that he was refusing to go to the Tecumseh facility. At 9:16 a.m., an officer at the penitentiary walked past the holding cell and witnessed Saylor in the cell with a state-issued belt wrapped around his neck and around the holding cell bars slightly above his head. Saylor was in a sitting position and was

alone in the cell. The officer notified the turnkey sergeant and the lieutenant on duty that there was a medical emergency. The belt was removed from Saylor's neck, and he was conscious and responsive. About an hour later, the officer who witnessed Saylor with the belt around his neck wrote a disciplinary misconduct report as a result of Saylor's actions in the holding cell. The charges on the misconduct report were count I, mutilation of self or others; count II, swearing, cursing, or use of abusive language or gestures; and count III, violation of regulations.

An investigatory hearing was held on September 18, 2010. Saylor was present, and the investigating officer informed him of the disciplinary misconduct report and the disciplinary charges against him. At that time, Saylor requested that a Dr. Kamal be a witness "to describe [his] mental health condition." The investigating officer's report noted that the recommended date for the disciplinary hearing was September 23. Saylor was not allowed to sign the misconduct report, apparently due to his being placed on suicide watch, but a copy was prepared and stored for his later viewing.

The "Institutional Disciplinary Committee" (IDC) was set to hold the disciplinary hearing on September 23, 2010, but the hearing was continued until September 29 because Saylor was in "segregation" and unavailable.

On September 29, 2010, Saylor told the IDC that he had not received a copy of the misconduct report. Saylor was given a copy of the report, and the disciplinary hearing was continued until October 6, to ensure that Saylor had time to prepare a defense.

The disciplinary hearing was held on October 6, 2010, with Saylor present. Saylor requested another continuance, arguing that he needed more time to prepare his defense. His request was denied. Testimony and exhibits were received. The reporting officer testified at the hearing by telephone at the request of the IDC. Saylor was given the opportunity to ask the reporting officer questions through the IDC chairperson. Saylor also presented a defense, in which he argued that the misconduct report should be dismissed because his due process rights had been violated in numerous ways. Further, Saylor entered three pages of written testimony into the record.

Following the disciplinary hearing, the IDC found Saylor guilty of count I, mutilation of self or others, and dismissed counts II and III. Specifically, the IDC found Saylor guilty of mutilation by attempting to hang himself by wrapping a state-issued belt around his neck and attaching it to the bars of the holding cell. It also found that he had sufficient time to prepare his defense and sufficient time to request to go to the law library to read all pertinent rules. He was given a sanction of 45 days of disciplinary segregation.

Saylor then submitted an appeal to the Department of Correctional Services Appeals Board (Appeals Board). The Appeals Board affirmed the IDC's decision, finding that "some competent, material, and substantial evidence exists to support the [IDC's] finding of guilt" and that Saylor had been afforded procedural due process. Saylor filed an appeal with the district court, which affirmed the decision of the Appeals Board.

#### ASSIGNMENTS OF ERROR

Saylor assigns that the district court erred in (1) finding that he was not deprived of due process in his disciplinary proceeding and (2) finding that there was competent evidence to conclude that he was guilty of a rule violation.

## STANDARD OF REVIEW

An aggrieved party may obtain review of any judgment or final order entered by a district court under the Administrative Procedure Act (APA). See Neb. Rev. Stat. § 84-918 (Reissue 2008). A final order rendered by a district court in a judicial review pursuant to the APA may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Lessley v. Nebraska Dept. of Corr. Servs.*, 15 Neb. App. 955, 739 N.W.2d 470 (2007). When reviewing an order of a district court under the APA for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* An appellate court, in reviewing a district court judgment for errors appearing on the record, will not substitute its factual findings for those of the district court where competent evidence supports those findings. *Id.* Whether a decision conforms to the law is, by definition, a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court. *Id.*

## ANALYSIS

### *Procedural Due Process.*

Saylor first assigns that the district court erred in finding that he was not deprived of due process in his disciplinary proceeding. Saylor contends that he was denied due process in many respects, including that he was not properly served with a copy of the misconduct report, that the misconduct report did not provide proper notice of the charges against him and did not identify where it was filed, that there was no investigative hearing, that he was not given sufficient time to prepare his defense, that he was not provided access to a rule book or other policies and disciplinary procedures, that he was denied an opportunity to cross-examine witnesses against him and to call his own witnesses, and that any waivers he made were not valid.

Prison disciplinary proceedings are not treated as criminal prosecutions, and therefore, the full panoply of rights due a criminal defendant does not apply; instead, there must be a mutual accommodation between the institutional needs and objectives and the provisions of the Constitution. *Lessley v. Nebraska Dept. of Corr. Servs.*, *supra*. Disciplinary hearings are sui generis, governed by neither the evidentiary rules of a civil trial, a criminal trial, nor an administrative hearing. The only limitations are those imposed by due process, a statute, or administrative regulations. *Id.*

In *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), the U.S. Supreme Court established the due process requirements accorded prison disciplinary proceedings. An inmate facing disciplinary charges must receive (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action. However, such rights must be viewed in light of the prison setting and the necessity of the State to maintain an acceptable level of personal safety within those institutions. See *id.*

In the instant case, the record shows that on September 18, 2010, 4 days after the incident in question occurred, an investigatory hearing was held in which Saylor was present. The investigating officer informed Saylor of the disciplinary misconduct report and the reason for the filing of such report. Saylor was not allowed to sign the misconduct report apparently because he

was on suicide watch, but a copy was prepared and stored for his later viewing. Although Saylor did not receive a copy of the misconduct report on September 18, he was informed of the charges and the basis for the charges on that date.

On September 29, 2010, the IDC continued the disciplinary hearing to October 6, based on Saylor's contention that he had not received a copy of the misconduct report. He was given a copy of the report at that time to ensure that he had time to prepare a defense. Therefore, even if Saylor did not receive a copy of the misconduct report until September 29, he had sufficient advance written notice of the disciplinary charges against him.

At the disciplinary hearing, Saylor was present and given an opportunity to call witnesses and present documentary evidence in his defense. The record indicates that Saylor waived his right to request witnesses, including his previous request to have Dr. Kamal as a witness, and waived his right to have the reporting officer at the hearing. However, the IDC requested the reporting officer as a witness and he testified by telephone. Saylor argues that he did not get to cross-examine the reporting officer because the IDC chairperson refused to ask the reporting officer the questions Saylor posed. He wanted to ask the reporting officer how the belt ended up wrapped around Saylor's neck and if it was possible that someone else put the belt around his neck. It is clear from the record that the reporting officer did not observe Saylor at the time the belt was being wrapped around his neck, and any possible scenarios were irrelevant as it was clear that Saylor was in the cell by himself at the time of the incident.

Further, Saylor testified in his own behalf, arguing that the misconduct report should be dismissed because his due process rights had been violated in numerous ways. Saylor also submitted three pages of written testimony which explained the due process violations he claimed had occurred. Based on the record before us, Saylor had an adequate opportunity to call witnesses and present documentary evidence in his defense.

Following the disciplinary hearing, the IDC entered a written statement setting forth the evidence it relied on and the reasons for the disciplinary action. Based on our review of the record, the district court did not err in finding that Saylor was not deprived of due process in his disciplinary proceeding. This assignment of error is without merit.

#### *Sufficiency of Evidence.*

Saylor next assigns that the findings of the district court were not supported by competent evidence and were arbitrary, capricious, and unreasonable. The standard of proof to sustain a charge of violating a prison rule is substantial evidence. See Neb. Rev. Stat. § 83-4,122(9) (Reissue 2008). Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. *Ponce v. Nebraska Dept. of Corr. Servs.*, 263 Neb. 609, 641 N.W.2d 375 (2002).

The Nebraska Administrative Code, specifically 68 Neb. Admin. Code, ch. 5, § 004 (2008), provides that an inmate commits an offense only when he engages in conduct that fulfills all the necessary elements of the offense. The conduct must be intentional, reckless, or grossly negligent. Saylor was charged with violating 68 Neb. Admin. Code, ch. 5, § 005.II[P] (2008), which prohibits "[i]ntentionally piercing, branding, or cutting any portion of one's body or another's body; or causing injury to one's self." Saylor argues that there was insufficient

evidence that Saylor acted intentionally, recklessly, or with gross negligence in causing the belt to be around his neck. He argues that the misconduct report does not allege that Saylor caused the belt to be around his neck and the bars, only that Saylor was found hanging in the holding cell. He contends that there was no evidence offered as to how he came to be in that position. However, he provides no alternatives to explain what happened. There was no evidence that someone else was in the area, no evidence that Saylor called for help, and no evidence that Saylor tried to remove the belt when he was conscious and responsive. Further, Saylor made it clear when he was placed in the holding cell that he did not want to be transferred to the Tecumseh facility. Based on the record, there is substantial evidence to support a conclusion that Saylor purposely put the belt around his neck and the bars of the cell and tried to hang himself.

There is also substantial evidence that Saylor was injured in his attempt to hang himself. The nurse who examined him reported that there was a reddened area with a small abrasion on his neck. There are also photographs of Saylor in the record that show his injuries.

We conclude that substantial evidence exists to support the IDC's finding that Saylor violated 68 Neb. Admin. Code, ch. 5, § 005.II[P], mutilation of self or others, and to support the Appeals Board's decision upholding that finding. Thus, the district court's order affirming the Appeals Board's decision is supported by competent evidence and is neither arbitrary, capricious, nor unreasonable.

#### CONCLUSION

We conclude that the district court did not err in finding that Saylor was not deprived of due process in his disciplinary proceeding and in finding that there was substantial evidence to conclude that he was guilty of violating a prison rule. Accordingly, the district court's affirmance of the decision of the Appeals Board upholding that of the disciplinary committee is affirmed.

AFFIRMED.